

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

CNX Gas Company LLC
CNX Center
1000 Consol Energy Drive
Canonsburg, PA 15317-6506

Respondent

Property located at:

Mamont Pipeline
Approximately 2,000 feet east of
Saltsburg Road and Greensburg Road
Washington Township,
Westmoreland County, Pennsylvania 15613

Proceeding Under Class I and
Section 309(g)(2)(A) of the
Clean Water Act

EPA Docket No. CWA-03-2011-0167

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement, and the accompanying Final Order (jointly "CAFO"), is entered into by the Director, Environmental Assessment and Innovation Division, United States Environmental Protection Agency, Region III ("Complainant"), and Respondent, CNX Gas Company LLC ("Respondent"), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules")*, 40 C.F.R. Part 22. Subpart I of 40 C.F.R. Part 22 applies to this proceeding. The authority to settle this matter has been delegated to the Regional Administrator pursuant to delegation no. 2-52-A (9/1/05). The parties have agreed to settlement of violations of the Clean Water Act by Respondent. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) & (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any

person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act, in an amount not to exceed \$16,000 per day for each day of violation, up to a total penalty amount of \$177,500.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

3. Respondent, CNX Gas Company LLC, is a company with a place of business at 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317. The Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

4. Respondent has, at all times relevant to this CAFO, controlled six sites located approximately 2,000 linear feet east of Saltsburg Road and Greensburg Road, near Washington Township, Westmoreland County, Pennsylvania, as further identified on the map attached hereto as Exhibit "A" (hereinafter, "the Sites").

5. The Sites contain streams which drain to the Beaver Run Reservoir. Beaver Run is a tributary of the Kiskiminetas River. Both Beaver Run Reservoir and the Kiskiminetas River are navigable-in-fact bodies of water. Therefore, the Sites are "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2, and 40 C.F.R. § 122.2.

6. Commencing at various times between September 2010 and the present, Respondent, or persons acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States located at the Sites described in Paragraph 4, above, as identified on Exhibit "A", attached hereto. Respondent's activities include placing fill material into streams during construction of a natural gas pipeline without federal authorization.

7. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any material which replaces portions of the "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.

8. The equipment referenced in Paragraph 6, above, which discharged fill material to "waters of the United States" constitutes a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of dredged or fill material from point sources to waters of the United States except in compliance with, among others, a permit issued by the Secretary of the Army under Section 404 of the Act, 33 U.S.C. § 1344.

10. At no time during the discharge of dredged and/or fill material to the waters of the United States located on the Sites did the Respondent have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.

11. Respondent, by discharging dredged and/or fill material to the waters of the United States without authorization, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. CONSENT AGREEMENT AND FINAL ORDER

12. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and venue.

13. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

14. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consent to issuance of this CAFO without adjudication.

15. Each party to this action shall bear its own costs and attorney fees.

16. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

17. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

18. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on this CAFO prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Pennsylvania Department of Environmental Protection ("PA DEP") regarding this action, and will mail a copy of this document to the appropriate Pennsylvania official.

19. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS to pay a civil penalty in the amount of twenty-thousand dollars (\$20,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

20. Respondent shall pay an administrative civil penalty of twenty-thousand dollars (\$20,000) for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c), in the following manner:

- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, CWA 03-2011-0167;
- B. All checks shall be made payable to "United States Treasury";
- C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Bryson Lehman 513-487-2123

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

20. Respondent shall send notice of such payment, including a copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
Mail Code: 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Nina Rivera
Mail Code: 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

21. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or any regulations promulgated thereunder.

22. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

23. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

24. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

25. The penalty specified above represents civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

26. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent is false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

27. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

28. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. EFFECTIVE DATE

29. Pursuant to 33 U.S.C. § 309(g)(4) and 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded. This CAFO will become final thirty (30) days after issuance, 33 U.S.C. § 1319(g)(5), and will become effective on that same date, 40 C.F.R. § 22.31(b).

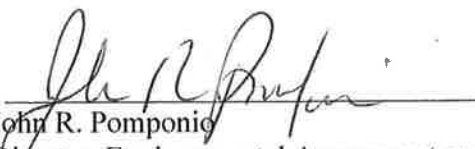
FOR RESPONDENT CNX GAS COMPANY LLC

By: Craig W Neal

Name: Craig W. Neal

Title: Vice President-Operations

FOR COMPLAINANT, US ENVIRONMENTAL PROTECTION AGENCY, REGION III:

By:  Date: 7/13/11
John R. Pomponio
Director, Environmental Assessment and Innovation Division

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Clean Water Act

EPA Docket No. CWA-03-2011-0167

FINAL ORDER

Property located at:


Mamont Pipeline
Approximately 2,000 feet east of
Saltsburg Road and Greensburg Road
Washington Township,
Westmoreland County, Pennsylvania 15613

PURSUANT TO Section 309(g) of the Clean Water Act, as amended, 33 U.S.C. § 1319 ("CWA"), and the Consolidated Rules of Practice, and having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 309(g)(3) of the CWA, IT IS HEREBY ORDERED that Respondent pay a penalty of twenty-thousand dollars (\$20,000) in accordance with Section III of the Consent Agreement.

The foregoing Consent Agreement and this Final Order shall be issued after the forty (40) days public comment period described at 33 U.S.C. § 309(g)(4) and 40 C.F.R. § 22.45(b) and upon filing with Regional Hearing Clerk. It will become effective thirty (30) days after issuance, 33 U.S.C. § 309(g)(5).

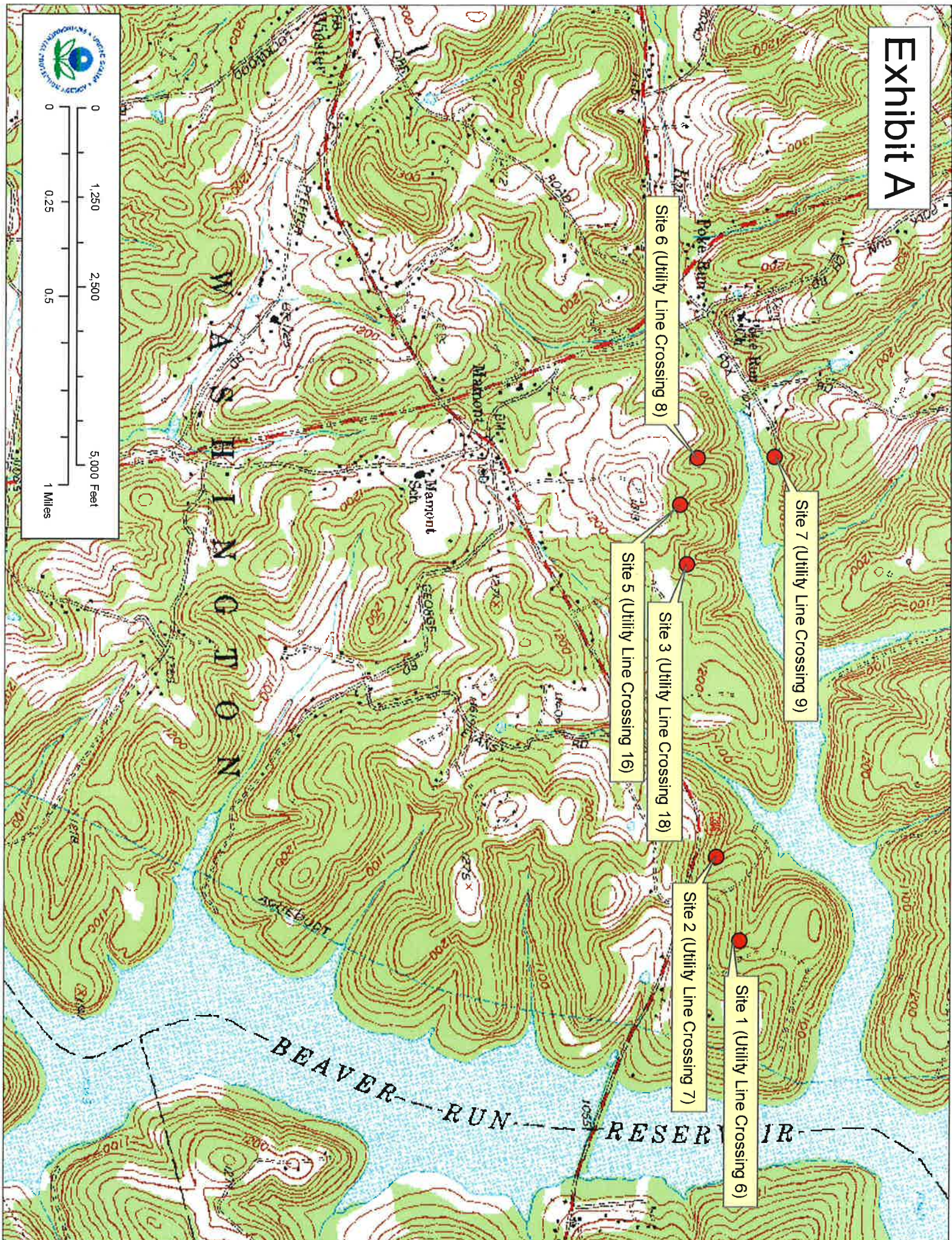
7/13/2011

Date


John Pomponio
Director

Environmental Assessment and Innovation Division
U.S. EPA Region III

Exhibit A



CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Consent Agreement and Final Order, and that copies of this document were sent to the following individual in the manner described below:

By first class, certified mail, return receipt requested:

CNX Gas Company LLC
CNX Center
1000 Consol Energy Drive
Canonsburg, PA 15317-6506

Date: _____

7/13/11



Nina Rivera
Sr. Asst. Regional Counsel
US EPA Region III